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What to consider before signing a personal guarantee



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Personal guarantees are a standard business practice in commercial transactions, however, they are often misunderstood and can pose significant financial risks.

A personal guarantee is an agreement of one party to answer for the debt, default or miscarriage of another. Director guarantees are a common type of guarantee, where the director of a company receives a request for a personal guarantee which holds them liable for the company's debt if the company does not meet their obligation, i.e. fails to pay.

These guarantees are usually required in loan, lease or other finance arrangements with small companies. Personal guarantees can be given in the form of a deed or a contract. When given in the form of a deed, it must be in writing and conform with a number of statutory requirements to be enforceable. Here are five things to consider before signing a personal guarantee:

The extent of the guarantee

Review the total amount that must be repaid under the guarantee and be wary of any other costs that may be

added to the debt. For example, the wording of the guarantee may include other amounts which may be claimed under the guarantee, such as mercantile fees, legal costs and interest. These additional costs can significantly exceed the original amount when the final amount is owed.

How the guarantee will be released

The release of the guarantee will vary depending on the type of agreement. In some circumstances, the guarantee will not be released until an amount has been repaid in full or there is an expiry of a lease. On other occasions, the guarantor may be able to negotiate for an earlier release. Company directors should be aware that ceasing a relationship with the company, i.e. resigning from their role, does not automatically terminate a guarantee. The guarantor must obtain the consent of the creditor/lender, and potentially the debtor person/company, to be released from the guarantee.

What happens if there is more than one guarantor

In cases where there is more than one guarantor, joint or several liabilities for the debt may be accepted. This type of

liability may hold both or even just one guarantor equally liable for the debt. The terms of the agreement may hold one guarantor responsible for all the debt if the other guarantor does not meet their obligations. In addition, creditors may be able to selectively enforce the debt on one guarantor.

Understand the terms and wording of the guarantee

Consider the consequences of the terms you are accepting and remember each guarantee is different. The wording of the guarantee will also dictate whether it is secured or unsecured, and what debts may be claimed. For example, an 'all moneys' guarantee means that you will be liable for all the debts and obligations of the company.

Be aware of the legal and financial consequences

Make sure you understand who you are providing the personal guarantee on behalf of and the likelihood of the person/company not being able to pay the debt. Read the contract carefully and obtain independent advice before signing to understand the limit, extent and impact of the guarantee.

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Succession planning for SMSFs

A mandatory component of managing a self-managed super fund (SMSF) is planning out what will happen to the fund if its trustee was to pass away.

While succession planning may not be one of the first responsibilities that comes to mind when managing an SMSF, it is a necessity that can provide certainty and peace of mind for a deceased trustee's family.

It is also especially important in cases where one trustee, for example, a husband, takes a more active role in the management of an SMSF than his wife and fellow trustee, and wants to reduce any potential burdens involved in the fund's administration and compliance if he was to pass away.

Succession planning can become quite complex if little or no attention is paid to it on an ongoing basis, but there are ways trustees can ensure the best outcome for both the fund and their family.

One option for a sole member fund is to appoint another trustee. Please note that the non-member trustee cannot be the employer of the member unless they are related. This would not be an option for a fund with two members as the available exemptions only apply to single member funds.

Those who appoint a family member or close friend must consider first whether they are suitable for the role; running an SMSF requires expertise and knowledge, and appointing someone with limited experience may not be in the best interest of the fund's future.

Some SMSF trustees may also choose to appoint an enduring power of attorney. An enduring power of attorney is someone who makes decisions on the trustee's behalf if they become incapacitated or pass away. Common power of attorneys include accountants, financial advisors and lawyers; basically those who understand SMSF management and the associated challenges. Another option is to have a binding death benefit nomination (BDBN) in place. Since a person's superannuation does not make up part of their estate and is therefore not automatically covered by their Will, a BDBN is often a good solution to help with the distribution of a member's super benefits.

There are alternative strategies that may be more appropriate than an SMSF, depending on your individual financial situation. As usual any investment decision is best made with the input of an appropriate financial advisor.



Transition to retirement changes

With the Federal Government's proposed changes to the transition to retirement (TTR) pension to take effect from 1 July 2017, those with existing arrangements should review them to avoid impact on their retirement funds.

Following changes in the 2016 Federal Budget, from 1 July 2017, transition to retirement (TTR) pensions will no longer receive a tax-free status on the investment earnings of pension accounts. The investment earnings will be taxed at 15 per cent for both new and existing TTR arrangements.

Although the tax benefits of TTR pensions will be removed, some attractions will remain. For those who have been receiving a TTR pension, if they retire or change jobs after age 60 they can access their existing super balance in an unrestricted way, as the pension converts to a full account based pension.

The annual TTR pension will remain tax free for those over 60, however, those below this age will be discouraged to start or continue a TTR arrangement as they will be subjected to 15 per cent tax on all investment earnings.

Opportunities for business

Expressions of Interest are being called for businesses interested in participating in the upcoming Economic Gardening - High Growth Business Program.

This program will be run for a 3rd time in the region from March to June 2017 and is brought to you by Capricorn Enterprise. It aims to provide small to medium sized enterprises with assistance to help them fast track their business with the aim to achieve increased profits and sustainable growth. Through the ongoing support from both Rockhampton and Livingstone Councils, the program is being offered FREE to participating businesses. Our very own Jayne Maresse and Trisha Clifford will be presenting the financial component of the program, so it is well worth attending.

For more information visit: [The Capricorn Enterprise website](http://www.capricornenterprise.com.au)

There are also other current and upcoming opportunities for businesses in the form of Government grants. One for small businesses looking to grow and another for a digital technology grant. There are eligibility criteria for both grants, so check the links below if you feel these may be of interest:

Visit: <https://www.business.qld.gov.au>

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Our team at Evans Edwards can also assist businesses through tailored improvement strategies that can help you, so please give us a call.

**LET US HELP
YOU ACHIEVE
YOUR GOALS**